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18 Attorneys for Plaintiffs Roane Holman, Narcisco Navarro Hernandez,
19 Miguel A. Alvarez, and all others similarly situated,

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 ROANE HOLMAN, NARCISCO
23 NAVARRO HERNANDEZ, MIGUEL A.
24 ALVAREZ, and all others similarly
25 situated,

26 Plaintiffs,

vs.

EXPERIAN INFORMATION
SOLUTIONS, INC.;

Defendants.

) Case No. CV 10-00180 CW

) FIRST AMENDED COMPLAINT

) CLASS ACTION

) and

) JURY TRIAL DEMAND

INTRODUCTION

1
2 1. This is a consumer class action against Experian Information Solutions, Inc.
3 (Experian) for its willful violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §
4 1681b and § 1681e(a). Since at least 2007 Experian has known that collection agencies
5 are not permitted to use consumer reports to collect on non-consensual towing deficiency
6 claims. Experian also has known since 2007 that it must maintain reasonable procedures
7 to limit the furnishing of consumer reports to permissible purposes, that it must make a
8 reasonable effort to verify the uses that have been certified by a prospective user before it
9 furnishes any reports and that it cannot rely on the subscriber's "blanket certification,"
10 and that it may not furnish a consumer report if it has reason to believe that it will not be
11 used for a permissible purpose. In violation of these obligations, during the period 2008
12 to present Experian furnished thousands of consumer reports to Finex to use in collecting
13 on non-consensual towing claims.

PARTIES

14
15 2. Plaintiffs Roane Holman (Holman), Narcisco Navarro Hernandez (Navarro),
16 and Miguel A. Alvarez (Alvarez) are "consumers" as defined by 15 U.S.C. § 1681a(c) who
17 reside in San Francisco, Salinas and Watsonville, California, respectively.

18 3. Experian is a "consumer reporting agency" as defined in 15 U.S.C. §§
19 1681a(f) and (p).

JURISDICTION

20
21 4. This court has jurisdiction under 28 U.S.C. § 1331. Defendants were
22 authorized to and have been doing business within this district at all relevant times.

VENUE

23
24 5. The activities alleged herein occurred within this district.
25
26

FACTS

1
2 6. On August 8, 2009, a law enforcement officer directed Big Guys Towing
3 (Big Guys) to tow plaintiff Holman's car. After towing the car, Big Guys sent Holman a bill
4 for towing and storing his car. Holman did not pay Big Guys' bill for towing and storage.
5 Big Guys disposed of the vehicle on August 31, 2009, and subsequently claimed that
6 Holman was liable for towing and storage charges. When Holman failed to pay Big Guys'
7 alleged deficiency claim, Big Guys retained Finex Group, LLC (Finex) to collect the towing
8 deficiency claim from Holman.

9 7. On September 21, 2009, a law enforcement officer directed Speed of Light,
10 Inc. to tow plaintiff Alvarez's car. After towing the car, Speed of Light sent Alvarez a bill
11 for towing and storage. Alvarez did not pay Speed of Light's bill. Speed of Light disposed
12 of the car on October 22, 2009, and subsequently claimed that Alvarez was liable for the
13 towing deficiency claim. When Alvarez failed to pay the towing deficiency claim, Speed of
14 Light retained Finex to collect that alleged debt from Alvarez.

15 8. In or about August 2009, a law enforcement officer directed a tow company
16 to tow plaintiff Navarro's car. After towing the car, the tow company sent Navarro a bill for
17 towing and storage of the vehicle. After Navarro did not pay that bill, the tow company
18 disposed of the vehicle and then claimed that Navarro was liable to it for towing deficiency
19 claim. When Navarro failed to pay the towing deficiency claim, the towing company
20 retained Finex to collect that asserted debt from him.

21 9. Finex was formed in late 2007. The owners' business plan was to engage in
22 the debt collection business with emphasis on the collection of towing deficiency claims.

23 10. Finex entered into a subscriber agreement with Experian in January 2008.
24 Experian's salesman sold Finex an Experian product called "Collection Advantage,"
25 which is a consumer report that contains the name of the consumer, his or her address and
26 phone numbers and 33 attributes of credit-related information, such as aggregate credit,

1 judgments, liens, number of tradelines, number of inquiries, and trade balances.

2 11. Experian's Collection Advantage reports also include a "Recovery Score"
3 for the consumer who is the subject of the report. The Recovery Score is designed and
4 marketed by Experian as a tool to help collection agencies identify which accounts have
5 the greatest recovery potential and which are the least worthwhile to pursue. The
6 Recovery Score rank orders charged off accounts based on their collectability. Experian
7 created the Recovery Score by looking at the individual's performance in paying charged
8 off bank credit card accounts. Experian represents that its Recovery Score is predictive of
9 likely payment during the next six months.

10 12. Finex used Experian's Collection Advantage reports to collect the towing
11 deficiency claims. It used the Collection Advantage reports to organize and prioritize its
12 collection efforts and it made Experian's Recovery Score available to its collectors to use
13 in conversations and communications with consumers.

14 13. When Finex applied to become a subscriber to Experian's consumer
15 reports, Finex certified that it was intending to use the reports for collections. Experian
16 failed to make a reasonable effort to verify the uses that Finex had certified. If Experian
17 had made a reasonable effort to verify the purposes for which Finex was obtaining
18 consumer reports, it would have known that Finex was collecting on towing deficiency
19 claims for which consumer reports cannot be used legally.

20 14. When Experian's sales representative suggested the Collection Advantage
21 product to Finex, Finex's owners said the business focused on the collection of towing
22 deficiency claims and that they were concerned about being in compliance with the Ninth
23 Circuit's decision in the *Pintos* case. Finex's owners asked Experian for assurances Finex
24 would not be violating the FCRA by obtaining and using Collection Advantage reports in
25 its collection activities concerning these towing claims. Experian assured Finex' owners
26 they would not violate *Pintos* by buying the Collection Advantage reports.

1 Whether Experian maintained reasonable procedures designed to limit the furnishing
2 of consumer reports to the purposes listed in 15 USC 1681b. (15 USC § 1681e(a)).

3 Whether Experian made a reasonable effort to verify the uses certified by Finex prior
4 to furnishing Finex with consumer reports. (15 USC § 1681e(a)).

5 Whether Experian violated the FCRA by furnishing consumer reports to Finex when
6 it had reasonable grounds for believing that Finex was not intending to use the
7 reports for a permissible purpose. (15 USC § 1681e(a)).

8 22. Plaintiffs' claims are typical of the claims of the Class, which all arise from
9 the same operative facts and are based on the same legal theories.

10 23. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
11 are committed to vigorously litigating this matter and have retained counsel experience in
12 handling FCRA claims and class actions. Neither plaintiffs nor his counsel have any
13 interests that might cause them not to vigorously pursue the claims.

14 24. This action should be maintained as a class action because the prosecution of
15 separate actions by individual members of the Class would create a risk of inconsistent or
16 varying adjudications with respect to individual members that would establish
17 incompatible standards of conduct for the parties opposing the Class, as well as a risk of
18 adjudications with respect to individual members that would as a practical matter be
19 dispositive of the interests of other members not parties to the adjudications or substantially
20 impair or impede their ability to protect their interests.

21 25. Whether Experian furnished Finex with a person's consumer report for
22 Finex's use in collecting on a towing deficiency claim can be determined from business
23 records maintained by Finex and Experian.

24 26. A class action is a superior method for the fair and efficient adjudication of
25 this controversy. The interest of the class members in individually controlling the
26 prosecution of their individual claims is slight because statutory damages are limited to
between \$100 and \$1,000 under the FCRA. Management of the class claims is likely to

1 present significantly fewer difficulties than those presented in many individual claims. The
2 identities of the class members may be obtained from business records maintained by Finex
3 and Experian.

4 **Experian Violated Sections 1681e(a) and 1681b of the FCRA**

5 27. Section 1681e(a) of the FCRA provides that every consumer reporting agency
6 shall maintain reasonable procedures designed to limit the furnishing of consumer reports to
7 the purposes listed under section 1681b of this title. Under Section 1681e(a), prospective
8 users of consumer reports must identify themselves and certify to the consumer reporting
9 agencies the purposes for which they seek consumer reports. The consumer reporting
10 agencies are then required to make a reasonable effort to verify the uses certified by the
11 prospective user prior to furnishing such user a consumer report. Additionally, Section
12 1681e(a) prohibits a consumer reporting agency from furnishing a consumer report to any
13 person if it has reasonable grounds for believing that the consumer report will not be used
14 for a purpose listed in Section 1681b of the FCRA.

15 28. Experian violated Section 1681e(a) of the FCRA by failing to maintain
16 reasonable procedures designed to limit the furnishing of consumer reports to the purposes
17 listed under Section 1681b. Experian violated Section 1681e(a) by failing to verify the uses
18 certified by Finex prior to furnishing consumer reports to Finex. And Experian violated
19 Section 1681e(a) by furnishing consumer reports to Finex when it had reasonable grounds
20 for believing that the reports would not be used for a purpose listed in Section 1681b.

21 29. Experian violated Section 1681b of the FCRA because it had no reason to
22 believe that Finex intended to use its Collection Advantage product in connection with a
23 “credit transaction involving the consumer on whom the report [was] to be furnished.” In
24 fact, Experian knew that Finex intended to use the Collection Advantage reports to collect
25 debts that were unrelated to any credit transaction involving the consumers.
26

Injury-in-Fact

30. Experian's violations of the FCRA caused injury-in-fact to the named plaintiffs and the other class members by exposing their personal and confidential information to use and abuse by persons who have no legal right to obtain or use that information. Experian's violations of the FCRA put plaintiffs and the class members at a higher risk of identity theft than if their consumer reports had not been distributed illegally. Furthermore, by selling plaintiffs' and the class members' consumer reports to Finex for its use in collecting on towing deficiency claims, Experian has enabled Finex to use the information to its advantage and to the disadvantage of plaintiffs and the class. Additionally, by selling their consumer reports to Finex, Experian has violated plaintiffs' and the class members' right to be let alone. Experian's FCRA violations have also deprived plaintiffs and the class members of the right to control their own personal information, which is another aspect of privacy that is protected by the FCRA. Finally, by selling their private information to Finex, Experian has intruded upon the private affairs of the plaintiffs and the class members and it has misappropriated their highly confidential consumer information for its financial gain.

31. The actual damages suffered by the plaintiffs and the class are relatively small and difficult to quantify, so instead of seeking actual damages, plaintiffs and the class will seek the statutory damages that Congress has provided in Section §1681n to remedy willful violations of the FCRA like the violations involved here.

WHEREFORE, plaintiffs seek relief as follows:

(a) An order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing plaintiffs and their counsel to represent the class.

(b) Judgment against Experian for statutory damages in the amount of not less than \$100 and not more than \$1,000 per class member, pursuant to 15 U.S.C. § 1681n(a)(2).

(c) Judgment against Experian for punitive damages in an amount determined by

1 the jury.

2 (d) Reasonable attorney's fees and costs.

3 (e) Such other and further relief as may be just and proper.

4 Dated: September 15, 2011.

5 ANDERSON, OGILVIE & BREWER LLP

6 LAW OFFICES OF BALÁM O. LETONA

7 By: /s/ Mark F. Anderson

8 Mark F. Anderson

9 Attorneys for Plaintiffs

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs demand a trial by jury on all issues.

12 Dated: September 15, 2011.

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16 Mark F. Anderson

17 Attorneys for Plaintiffs